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Supreme Court, U.S.
FILED

04-465 AUG 10 2004

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MAHBOUB BENCHIMOL - PETITIONER

vs.

MARGARET URRUTIA - RESPONDENT

ON PETITION FOR CERTIORARI TO

THE SUPREME COURT OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

Mahboub Benchimol, pro se

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Plantation, Florida 33322

(954) 673-0982

QUESTIONS PRESENTED

1) Whether the lower courts denied petitioner's freedom of information as guaranteed by a United States treaty?

2) Whether petitioner's denial of freedom of information constituted denial of petitioner's Constitutional due process rights, requiring a new trial?

3) Were petitioner's unreliable, inaccurate comments inappropriately admitted to the record, in part or in whole, due to the mental and physical infirmities, and general ennui suffered by the trial court judge, the Honorable Leonard L. Stafford, presiding over what petitioner believes was his last trial before retirement?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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APPENDIX B: Fourth District Court of Appeal Of the State of Florida Decision in Benchimol v. Urrutia, Case No. 4D03-263, dated March, 2004.

APPENDIX C: County Court of the 17th Judicial Circuit in and for Broward County, Florida Decision in Benchimol v. Urrutia, Case No. 98-004746, dated January 17, 2003.

TABLES OF AUTHORITIES CITED

CONSTITUTION, TREATIES, STATUTES AND RULES

28 U.S.C. §1257(a) 10

The Convention of Establishment, Protocol, and Establishment and Navigation, Feb. 12, 1961, US-FR, Art.II(2), XIV(3), 11 U.S.T. 2398 12

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is:

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix "A" to the petition and is:

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished, but appears at the address http://www.flcourts.org/sct/clerk/disposition/2004/5/04-783.pdf as of the date of filing.

The per curiam opinion of the Fourth District Court of Appeal of the State of Florida appears at Appendix "B" to the petition and is:

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the County Court of the 17th Judicial Circuit in and for Broward County, Florida appears at Appendix "C" to the petition and is:

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet

reported; or,

[X] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A_____.

[ ] The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

[X] For cases from state courts:

The date on which the highest state court decided thsi case was Wednesday, May 12, 2004. A copy of that decision appears at Appendix "A".

[ ] A timely petition for rehearing was denied by the

United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A_____.

[X] The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a) because petitioner's title, right, privilege, and/or immunity is specially claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CONSTITUTIONAL, TREATY AND STATUTORY PROVISIONS INVOLVED

1. The Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution provide no person shall be deprived of life, liberty, or property, without due process of law.

2. A U.S. Treaty, The Convention of Establishment, Protocol, and Establishment and Navigation, guarantees enjoyment, within the territories of the other High Contracting Party, freedom of conscience, of worship, or information and of the press. The treaty was signed Feb. 12, 1961, US-FR, Art.II(2), XIV(3), 11 U.S.T. 2398.

STATEMENT OF THE CASE

Petitioner is a French citizen, therefore a natural person having the nationality of a High Contracting Party to a U.S. Treaty, the Convention of Establishment, Protocol, and Establishment and Navigation (the "Treaty"). Art.II(2), XIV(3), 11 U.S.T. 2398.

The Treaty guarantees "Nationals of each High Contracting Party shall enjoy, within the territories of the other High Contracting Party, freedom of conscience, of worship, of information and of the press." *Id.*

Prior to petitioner's lower court trial, petitioner was subjected to a deposition by opposing counsel without the aid of any requested interpreter (the "deposition"). Opposing counsel told petitioner the interpreter was not necessary. This deposition took place after, and despite, petitioner's emphatic requests for an interpreter's assistance to accurately convey important information.

At lower court trial, retiring Judge Leonard P. Stafford not only rejected petitioner's motion to strike the deposition taken without the aid of a requested interpreter, but also failed to otherwise limit the use of that deposition at trial for impeachment purposes. The deposition was used at trial for impeachment purposes, forming a basis of the jury's decision against petitioner contrary to the protections intended by the treaty.

Moreover, it was subsequently determined that the interpreter provided at lower court trial did not speak, like petitioner, formal French, but rather Creole. It was admitted in a written statement by said interpreter that he lacked competence in translating medical terms, certain colors and idiomatic expressions. The court made no effort to check this translator's ability to fulfill the court's obligation to ensure proper translation.

Retiring Judge Leonard P. Stafford also allowed defendant's witness to testify that petitioner "lied to me," despite petitioner's obvious difficulties communicating in English and inability to accurately translate medical terms and other subtle idiomatic nuances of the French language. Judge Stafford also failed to otherwise limit the use of that testimony at trial. That witness' unfounded, prejudicial comment formed a basis of the jury's decision against petitioner.

Judge Stafford failed to ensure Petitioner's freedom of information at trial despite the conspicuous inability of petitioner and petitioner's interpreters to adequately perform their duties at trial in service of the legal system.

The judge and court had no discretion in the matter but to require proper translation and exclude misinformation. By failing to do so, the judge and court breached and refused to perform an indisputable legal duty as guardians of court evidence.

The Treaty at issue guarantees freedom of information, and one reasonably expects such freedom to take on particular

importance when legal rights are at stake. Pursuant to this Treaty, courts are obliged to maintain the integrity of the free flow of correctly translated information. Otherwise, the full benefit of the law is limited, causing punishment of the innocent on the sole basis of their unfamiliarity with the English language.

The laws of America should be enforced in a manner concentrating protection for those least able to protect themselves. Petitioner believes this is such a case before the court, and has suffered from lack of protection under the Treaty and the 5th and 14th Amendments to the Constitution.

If petitioner's need for interpretive assistance was not ignored, and if Defendant's counsel and the courts had not disregarded the Treaty, petitioner would have received a fair trial based on accurately conveyed information.

As a result of the U.S. legal system's ethnocentricity, petitioner has lost faith in America's guarantee of life, liberty and the pursuit of happiness. Petitioner respectfully requests this court to order a new trial to uphold justice and equality for all.

REASONS FOR GRANTING THE WRIT

1) Did the lower courts deny petitioner's freedom of information as guaranteed by a United States treaty?

Petitioner, in preparation of this Petition, was surprised by the difficulty in finding reported cases enforcing the freedom of information guaranteed by the Treaty. Accordingly, what burden of proof must be overcome before the state, though the courts, is required to take active measures to ensure adequate communication and translation in the court system?

2) Did petitioner's denial of freedom of information constitute a denial of petitioner's Constitutional due process rights?

It is accepted constitutional doctrine that the due process clause of the fifth and fourteenth amendments protect interests that are recognized as constituting "life," "liberty," or "property." In a number of decisions, the Supreme Court has recognized that individuals possess fundamental liberty interests entitled to constitutional protection.

Read together with the Treaty's guarantee of freedom of information, petitioner's constitutional, fundamental and liberty interests to communicate in French clearly establish a zone of privacy around petitioner's preferred language of communication.

Without a sufficiently compelling reason to overcome petitioner's privacy, the government has no basis to make

petitioner suffer the indignity of intolerance, particularly in the hallowed halls of American justice.

3) Were petitioner's unreliable, inaccurate comments inappropriately admitted to the record, in part or in whole, due to the mental and physical infirmities, and general ennui suffered by the trial court judge, the Honorable Leonard L. Stafford, presiding over what petitioner believes was his last trial before retirement?

Petitioner is convinced Judge Stafford neither realized, nor was concerned, with the significant impact of petitioner's language difficulties upon resolution of the case.

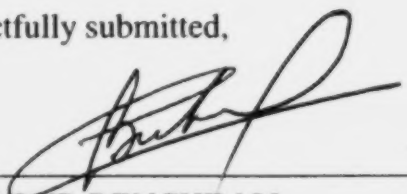
CONCLUSION

Petitioner takes the position that this current state of intolerance by the court system is a destructive holdover of the prevailing cultural paradigms in existence at the time the meager court rules concerning translations were established. America's laws remain Anglocentric despite the declining use of the English language in relation to demographic changes. For example, petitioner is aware of Florida's new proposed court translation regulations, which could have helped ensure a fair trial for petitioner.

The petitioner prays that the Court will also consider pertinent information regarding the importance of translation rights not contained in this petition, but known to the Court through its honorable experiences and service to the legal system.

Based on the foregoing, Petitioner respectfully submit that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,



_____, acting pro se

MAHBOUB BENCHIMOL

Date: 10-01-2004

APPENDIX A

Supreme Court of Florida Case Disposition Order in Benchimol v. Urrutia, Case No. SC04-783, dated Wednesday, May 12, 2004. Order available online at the address: http://www.flcourts.org/sct/clerk/disposition/2004/5/04-783.pdf as of the date of filing.

SUPREME COURT OF FLORIDA
WEDNESDAY, MAY 12, 2004
CASE NO.: SC04-783
Lower Tribunal No.: 4D03-263

MAHBOUB BENCHIMOL Petitioner(s) vs. MARGARET URRUTIA Respondent(s)

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). No Motion for Rehearing will be entertained by the Court.

A True Copy
Test:
s/Thomas D. Hall, Clerk, Supreme Court
Served:
MAHBOUB BENCHIMOL
FRANCES FERNANDEZ GUASCH
HON. HOWARD FORMAN, CLERK
HON. MARILYN BEUTTENMULLER, CLERK
HON. VICTOR TOBIN, JUDGE

APPENDIX "B"

Fourth District Court of Appeal Of the State of Florida Decision in Benchimol v. Urrutia, Case No. 4D03-263, dated March, 2004.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT, January Term 2004

MAHBOUB BENCHIMOL, Appellant

v.

MARGARET URRUTIA, Appellee

CASE NO. 4D03-263

Decision filed March 31, 2004

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Victor Tobin, Judge; L.T. Case No. 98-4746(02)

Jack Bariton of Jack Bariton, P.A., Plantation, for appellant.

Frances F. Gausch of Luis E. Ordonez & Associates, Miami, for appellee.

PER CURIAM. AFFIRMED.

FARMER, C.J., KLEIN and HAZOURI, JJ., concur.

APPENDIX "C"

COUNTY COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA Decision in Benchimol v. Urrutia, Case No. 98-004746, dated January 17, 2003.

IN THE CIRCUIT COURT OF 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

GENERAL CIVIL DIVISION

CASE NO. 98-004746 CACE (02)

MAHBOUB BENCHIMOL,

Plaintiff,

vs.

MARGARET URRUTIA,

Defendant.

_____/

FINAL JUDGMENT
FOR DEFENDANT

THIS CAUSE having come on for trial on December 16, 2002, before the honorable Leonard L. Stafford and jury,

and the jury having returned its verdict herein, now therefore, in accordance with the jury's verdict herein, it is

CONSIDERED, ORDERED and ADJUDGED as follows:

Final judgment be, and the same hereby is, entered herein in favor of the Defendant, MARGARET URRUTIA, and against the Plaintiff, MAHBOUB BENCHIMOL the Plaintiff is to take nothing by his action herein and the Defendant is to go hence without day. The Court reserves jurisdiction to consider defendant's motion to recover taxable costs and attorney's fees.

DONE and ORDERED in chambers in Ft. Lauderdale, Broward County, Florida this 17 day of January 2003.

s/Circuit Judge
Victor Tobin
A True Copy

_____

Honorable Victor Tobin
Circuit Court Judge

cc: James T. Sparkman, Esq.
Ramona L. Tolley, Esq.

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

MAHBOUB BENCHIMOL - PETITIONER

vs.

MARGARET URRUTIA - RESPONDENT

PROOF OF SERVICE

I, MAHBOUB BENCHIMOL, do swear or declare that on this date, _____, 20____, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and address of those served are as follows:

FRANCES F. GUASCH
APPELLATE ATTORNEY FOR RESPONDENT
SunTrust International Center, Suite 1800
One Southeast Third Ave., Miami, FL 33131

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20_____

_____
(Signature)